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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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March 16, 2016

Captain Steven Katz
Homicide Bureau
Los Angeles Sheriff's Department
1 Cupania Circle
Monterey Park, California 91755

RE: J.S.I.D. File #15-0172
L.A.S.D. File #015-04772-2177-057

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 10, 2015, non-fatal shooting of Teshawn Gathier by a member of the Los Angeles Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

JAMES GARRISON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy [redacted] #[redacted]

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MEMORANDUM

TO:	CAPTAIN STEVEN KATZ Homicide Bureau Los Angeles Sheriff's Department 1 Cupania Circle Monterey Park, California 91755
FROM:	JUSTICE SYSTEM INTEGRITY DIVISION Los Angeles County District Attorney's Office
SUBJECT:	Officer Involved Shooting of Teshawn Gathier J.S.I.D. File #15-0172 LASD File #015-04772-2177-057
DATE:	March 16, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 10, 2015, non-fatal shooting of Teshawn Gathier by Los Angeles Sheriff's Department (LASD) Deputy [redacted] We have concluded that Deputy [redacted] acted lawfully in self-defense.

The District Attorney's Command Center was notified of the shooting at approximately 4:54 a.m., on April 10, 2015. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, forensic science firearms analysis reports, photographic evidence and witness statements prepared by the LASD and submitted to this office by LASD Detective Philip Guzman. The voluntary statements of Deputy [redacted] were considered in this analysis.

FACTUAL ANALYSIS

On April 10, 2015, at approximately 3:15 a.m., tow truck driver [redacted] drove a flatbed tow truck to [redacted] located at [redacted] Juniper Street in the City of Los Angeles. The exterior sliding gate of the tow yard was closed and there were no other employees at the location. [redacted] looked up and down the street to make sure that no one was around and then opened the gate with a hand held remote. [redacted] backed the flatbed truck in and closed the gate. Unknown to [redacted] Teshawn Gathier had walked into the tow yard as [redacted] was backing in. [redacted] exited the flatbed and walked into a small, elevated mobile office in the southeast corner of the tow yard. [redacted] exited the office, walked back to his flatbed, and saw Gathier entering a Buick vehicle about thirty feet away.[1] Believing he was the only employee at the tow yard, [redacted] re-entered his flatbed for his own safety. [redacted] used his cell phone to call the [redacted] of the tow yard, [redacted] and asked him to call the police. [redacted] turned on his flatbed engine, and approximately

[1] The Buick, which was facing southbound, was parked to the northeast of [redacted] tow truck. The vehicle had been stored on the lot for approximately one week and Gathier had no ownership interest in it.

five to seven minutes later, Gathier turned on the Buick's headlights. [redacted] called [redacted] back, notified him that he had called the Sheriff's Department, and agreed that [redacted] should block the exit with his flatbed. [redacted] moved his flatbed in a diagonal position to block the sliding gate, and Gathier turned off the Buick's headlights. [redacted] advised [redacted] that Sheriff's deputies were at the location and [redacted] opened the sliding gate with the remote.

Deputies Jaime Huerta and Gregory Boling, in full uniform, responded to a call of a possible burglary at the tow yard. As they walked into the tow yard, they observed [redacted] sitting in his flatbed, pointing over his shoulder at Gathier sitting in the Buick. Gathier sat in the driver's seat with the engine running. With their departmentally issued weapons drawn, Huerta approached the driver's side of the Buick and Boling approached the passenger side. Standing approximately four feet from the Buick, Huerta pointed his service weapon and attached flashlight at Gathier, who did not respond. The deputies ordered him to turn off the engine, but Gathier continued revving it, causing the Buick to rock back and forth. Gathier quickly accelerated forward, crashing into the driver's side of the flatbed and the tow yard fence, and then backing up a short distance.

Huerta told [redacted] to further block the exit with his flatbed, and then to exit his truck and the tow yard. [redacted] complied with the request and walked across the street. Huerta and Boling continued to order Gathier to turn off the engine but he ignored them. Huerta broke the driver's side window with his baton and told Gathier to turn off the vehicle. Gathier backed the vehicle up to its original position, and then drove forward towards Huerta. Huerta jumped out of the way but his hand was struck by the vehicle's side mirror.[2] Gathier backed the vehicle up again, continued revving the engine and driving the vehicle back and forth, striking the side of [redacted] flatbed and the fence.[3] Gathier also reached under the dash area of the vehicle, and held his hands and fingers up as if he was gripping a gun, however the deputies observed that his hands were empty. Boling requested the assistance of additional deputies for an assault upon a deputy.

Additional uniformed deputies, including Christopher Valente, Travis Dowdy and [redacted] responded to Boling's request.[4] Huerta and Valente used a different flatbed truck located southeast of Gathier's vehicle as cover. [redacted] and Dowdy decided to use the same flatbed truck as Huerta and Valente, and attempted to approach it by walking through the narrow gap between the front of [redacted] truck and the south fence of the tow yard. As [redacted] made his approach through the narrow gap, Gathier drove backwards and then accelerated forward, striking the rear of [redacted] flatbed. Unsure of which direction the flatbed was going to move and fearing he would be struck by it, [redacted] jumped into a small space between the office and the fence in the southeast corner of the lot. [redacted] was positioned just east of the front of [redacted] flatbed and stood on the side rail of a ladder that was laying on its side adjacent to the fence. Gathier continued driving forward and Valente fired non-lethal pepper balls through the open driver's side window of the Buick. Gathier again slammed his car into [redacted] flatbed, causing Gathier's vehicle to turn towards [redacted] direction. Gathier backed the vehicle up, accelerated forward and drove at a high rate of speed towards [redacted] who was still standing between the mobile office and the south fence. Gathier drove into [redacted] flatbed, pushing it forward and narrowing the small gap between [redacted] flatbed and the south fence. Turning his wheels in a southeast direction, Gathier continued driving directly towards [redacted] yelled out that he was trapped and would have to fire his service

[2] Huerta suffered a cut and swelling on his left middle finger.
[3] From outside the tow yard, [redacted] could no longer see Gathier, but saw his flatbed moving as it was being hit and also saw the gate being pushed forward.
[4] An aerial unit also responded and ordered Gathier to exit the vehicle.

weapon. Fearing that Gathier was going to strike him with the Buick, [redacted] fired one round at Gathier from his service weapon. Gathier crashed into [redacted] flatbed, backed up and again accelerated towards [redacted] again yelled out that he was trapped and fired four or five more times at Gathier.[5] Gathier's vehicle hit [redacted] flatbed and momentarily stopped about eight to ten feet in front of [redacted] No longer revving the engine, Gathier leaned towards the passenger side of the vehicle. Unsure if Gathier was arming himself or was going to accelerate towards him again, [redacted] escaped through the gap between [redacted] flatbed and the fence.

Deputies Valente, Dowdy and Huerta approached Gathier to remove him from the vehicle. Gathier initially resisted their attempts to extract him from the vehicle but he was eventually taken into custody.[7]

Paramedics transported Gathier to St. Francis Medical Center where he was treated for gunshot wounds to his left wrist and left shoulder.

Statement of Teshawn Gathier

Gathier gave a Mirandized statement to LASD detectives on April 10, 2015. Gathier said the [redacted] told him to go into the tow yard. He went inside to borrow a car so that he could escape from men who were trying to kill him. Deputies shined their flashlights in his face, everyone went crazy and he tried to drive through the gate to get out of there. Gathier pointed his fingers at the deputies as if he was holding a gun because he wanted to scare them. Gathier saw smoke and objects hitting him, and he tried to drive out of the gate when the deputies started shooting at him. He only saw deputies off to the side and did not see the deputy in front of him as he was driving. Gathier did not try to hit anyone with the car and did not remember hitting a deputy with the car mirror. Gathier initially said the deputies were not real law enforcement officers because they were not nice to him. He later said he knew the deputies were real when he saw numerous patrol cars arrive and when they took him into custody because they handcuffed and beat him. Gathier also said he was hoping to die during the incident.[8]

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[5] A post-incident examination revealed that [redacted] departmentally issued .45 caliber Sig Sauer firearm was loaded with one round in the chamber and four rounds in the magazine. [redacted] firearm was normally loaded with one round in the chamber and ten rounds in the magazine; this is consistent with [redacted] having fired six rounds during the officer-involved shooting.

[6] The Buick came to rest with its right front tire wedged against the left front tire of the flatbed. The Buick suffered extensive damage to the interior and exterior, and the flatbed had damage to its exterior control levers, the metal side step beneath the driver's door and the left front tire rim.

[7] Gathier was charged in Los Angeles Superior Court case number VA138924 with violations of Penal Code sections 245(c), and 245(a)(1).

[8] Gathier also said he heard voices in his head of men who wanted to kill him. He stated he had recently been in custody but did not attend his court appearances because he was in a [redacted] there is no information that he was confined to a mental hospital.

Video of Incident

Surveillance camera equipment inside the tow yard was inoperable.

Sergeant Jose Ovalle, who appears to be standing on the passenger side of [redacted] flatbed, videotaped portions of the incident with a handheld camera. A deputy is heard ordering Gathier to exit the car and advising another deputy to use the pepper ball device. Gathier drives the Buick back and forth, strikes [redacted] flatbed and drives out of view. A few seconds later, gunshots can be heard. Deputies can be heard yelling that [redacted] is trapped. Ovalle did not capture the deputy-involved shooting due to his position and movements during the incident.

Surveillance video from a neighboring business did not capture the deputy-involved shooting but did show the exterior of the tow yard. Gathier is seen walking southbound, on the west sidewalk towards the intersection of Juniper Street and 90th Street, adjacent to the east gate of the tow yard. A flatbed truck can be seen approaching the tow yard and the south gate opening. After the truck backs into the tow yard, Gathier walks through the gate and out of sight. The gate closes and reopens several minutes later as a marked patrol car arrives. Additional deputies arrive and some enter the tow yard while some remain outside. The flatbed and the south exterior gate violently move and shake at various times. A deputy is seen running at a face pace from the area between the gate and the flatbed.

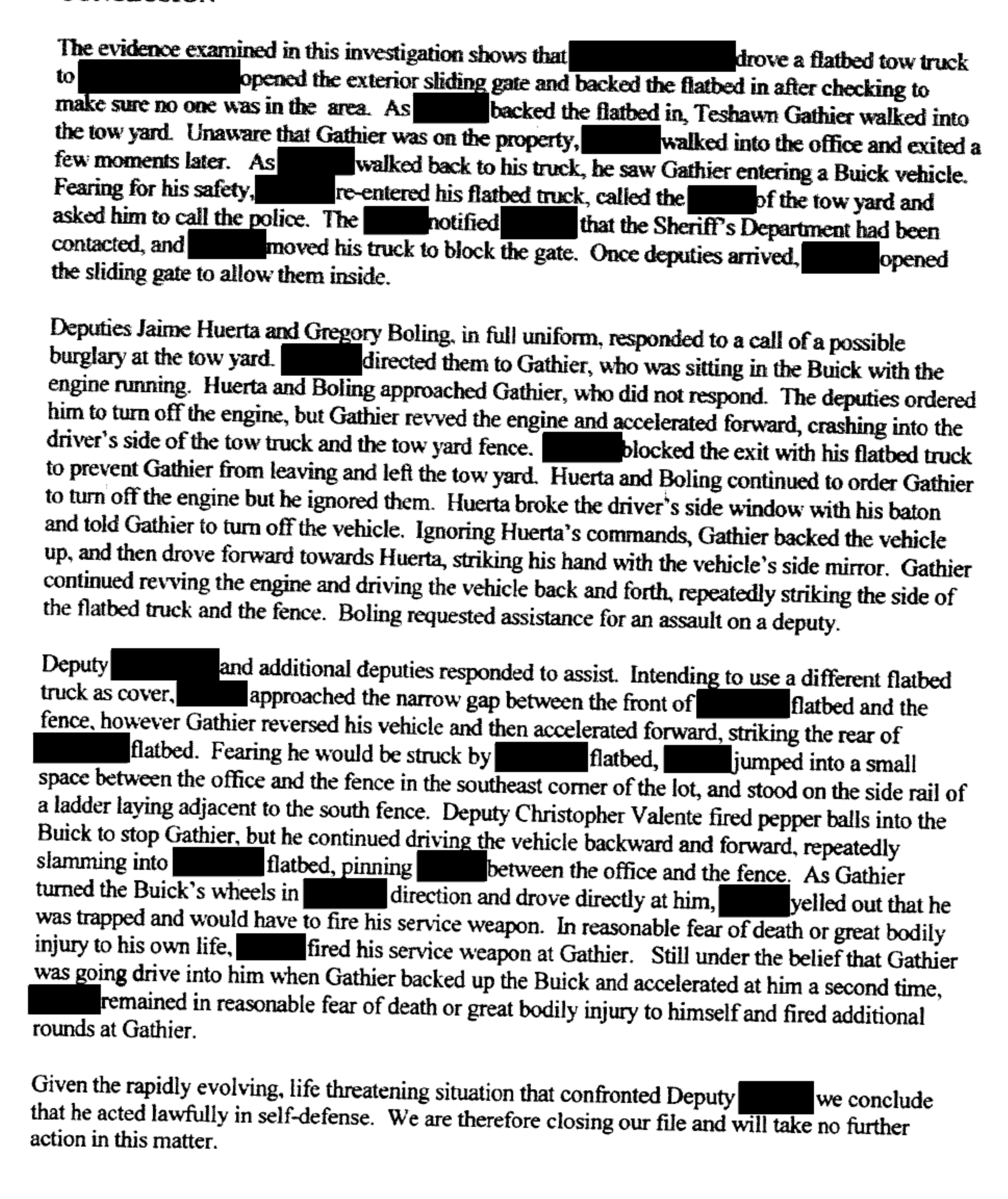
LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight….The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.



CONCLUSION

The evidence examined in this investigation shows that [redacted] drove a flatbed tow truck to [redacted] opened the exterior sliding gate and backed the flatbed in after checking to make sure no one was in the area. As [redacted] backed the flatbed in, Teshawn Gathier walked into the tow yard. Unaware that Gathier was on the property, [redacted] walked into the office and exited a few moments later. As [redacted] walked back to his truck, he saw Gathier entering a Buick vehicle. Fearing for his safety, [redacted] re-entered his flatbed truck, called the [redacted] of the tow yard and asked him to call the police. The [redacted] notified [redacted] that the Sheriff's Department had been contacted, and [redacted] moved his truck to block the gate. Once deputies arrived, [redacted] opened the sliding gate to allow them inside.

Deputies Jaime Huerta and Gregory Boling, in full uniform, responded to a call of a possible burglary at the tow yard. [redacted] directed them to Gathier, who was sitting in the Buick with the engine running. Huerta and Boling approached Gathier, who did not respond. The deputies ordered him to turn off the engine, but Gathier revved the engine and accelerated forward, crashing into the driver's side of the tow truck and the tow yard fence. [redacted] blocked the exit with his flatbed truck to prevent Gathier from leaving and left the tow yard. Huerta and Boling continued to order Gathier to turn off the engine but he ignored them. Huerta broke the driver's side window with his baton and told Gathier to turn off the vehicle. Ignoring Huerta's commands, Gathier backed the vehicle up, and then drove forward towards Huerta, striking his hand with the vehicle's side mirror. Gathier continued revving the engine and driving the vehicle back and forth, repeatedly striking the side of the flatbed truck and the fence. Boling requested assistance for an assault on a deputy.

Deputy [redacted] and additional deputies responded to assist. Intending to use a different flatbed truck as cover, [redacted] approached the narrow gap between the front of [redacted] flatbed and the fence, however Gathier reversed his vehicle and then accelerated forward, striking the rear of [redacted] flatbed. Fearing he would be struck by [redacted] flatbed, [redacted] jumped into a small space between the office and the fence in the southeast corner of the lot, and stood on the side rail of a ladder laying adjacent to the south fence. Deputy Christopher Valente fired pepper balls into the Buick to stop Gathier, but he continued driving the vehicle backward and forward, repeatedly slamming into [redacted] flatbed, pinning [redacted] between the office and the fence. As Gathier turned the Buick's wheels in [redacted] direction and drove directly at him, [redacted] yelled out that he was trapped and would have to fire his service weapon. In reasonable fear of death or great bodily injury to his own life, [redacted] fired his service weapon at Gathier. Still under the belief that Gathier was going drive into him when Gathier backed up the Buick and accelerated at him a second time, [redacted] remained in reasonable fear of death or great bodily injury to himself and fired additional rounds at Gathier.

Given the rapidly evolving, life threatening situation that confronted Deputy [redacted] we conclude that he acted lawfully in self-defense. We are therefore closing our file and will take no further action in this matter.